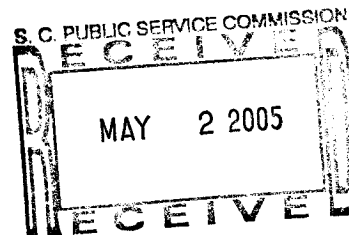


May 2, 2005



Charles L. A. Terreni, Esquire
Chief Clerk/Administrator
The Public Service Commission of South Carolina
P. O. Drawer 11649
Columbia, South Carolina 29211

RE: SCPSC Docket No. 2005-1-E

Dear Mr. Terreni:

Please find enclosed an original and ten (10) copies of Progress Energy Carolina's Response in Opposition to Nucor Steel-South Carolina's Motion to Postpone Hearing.

Very truly yours,

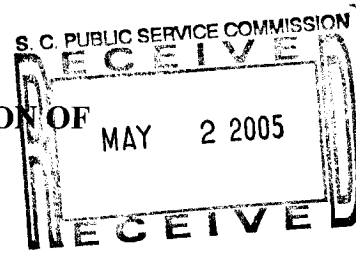
Len S. Anthony
Deputy General Counsel-General Counsel

LSA:mhm

cc: All Parties of Record

223771

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2005-1-E



IN RE:)	
)	
Progress Energy Carolinas, Inc.'s)	RESPONSE IN OPPOSITION TO
Annual Review of Base Rates for)	NUCOR STEEL'S
Fuel Costs)	MOTION TO POSTPONE HEARING
_____)	

On April 29, 2005, Intervenor Nucor Steel – South Carolina (“NUCOR”) moved to delay the procedural schedule of this proceeding by two weeks or, in the alternative, one week (“Motion to Postpone”). Carolina Power & Light Company, d/b/a Progress Energy Carolinas, Inc. (“PEC”), through undersigned counsel, opposes the Motion to Postpone. The motion is untimely, appears to be a dilatory tactic, has no basis in fact or law, and should be denied.

FACTS

The Notice of Hearing in this docket was filed February 22, 2005. Also, on February 22, 2005, the Commission issued a schedule requiring PEC to file testimony on April 27, with intervenor testimony due May 11. In March, PEC published notice of the hearing which is scheduled for May 25, 2005. PEC also provided bill inserts notifying customers of the hearing in March. On April 5 the Office of Regulatory Staff (“ORS”) served its first discovery request on PEC. NUCOR filed a motion to intervene on April 11, 2005, the next to last day to intervene. Prior to Nucor’s intervention, PEC’s attorney had several conversations with Nucor’s attorney in which PEC informed Nucor of the magnitude of the fuel cost increase PEC would be seeking and other basic information supporting the increase. On April 19, 2005, PEC responded to the ORS’s

discovery request and electronically mailed to Nucor PEC's responses. At that time, PEC advised Nucor that many of the documents provided to the ORS in response to ORS's discovery request would be made available to Nucor at PEC's offices in Raleigh. As of this date (May 2) Nucor has made no effort to review these documents. In contrast, the ORS has conducted a conference call to discuss PEC's responses and PEC's testimony, and has scheduled a visit to Raleigh on May 4 and 5 to meet with PEC's subject matter experts to further investigate PEC's filing.

Eleven days after Nucor intervened, during the late afternoon, at or around 5:00 p.m., on April 22, 2005, (a Friday) Nucor electronically sent PEC an extraordinarily extensive discovery request. Nucor asserts in its motion that PEC's responses are due May 2, 10 days from April 22. This is not the case. PEC's responses are due May 5, 10 days from April 25. Nucor cannot wait until late on a Friday afternoon to send discovery requests and have the 10 day time period for responding begin on that date. Doing so would punish PEC for Nucor's tardiness as it would result in 4 of the 10 days being weekends. Importantly, Nucor did not call PEC's attorney and advise him to be expecting the discovery request late in the day on that Friday. It is fortuitous that counsel for PEC checked his e-mail late on that Friday or the request would not have been discovered until the next Monday.

On April 27, 2005, PEC pre-filed its testimony and exhibits with the Commission and electronically served the testimony and exhibits on the ORS and Nucor that same day. On April 29, 2005, Nucor filed its motion to postpone hearing.

FUEL COST STATUTE

Pursuant to South Carolina Code Ann. section 58-27-865(B), each electrical utility must submit to the Commission its estimates of fuel costs for the next twelve (12) months. Specifically, the statute states: “The commission shall direct each electrical utility which incurs fuel cost for the sale of electricity to submit to the commission . . . its estimates of fuel costs for the next twelve months.” This procedure was established over 20 years ago and requires utilities to “true-up” the costs of fuel included in the cost of service, given the inherent uncertainty in forecasting fuel prices when setting rates. A public hearing is to be held between the twelve-month review periods. (S.C. Code Ann. § 58-27-865(B) stating that the Commission may hold hearings “at any time between the twelve-month reviews” and that “public hearings to be held every twelve months. . . .”). Following an investigation of these estimates and after the public hearing, the Commission directs each electrical utility “to place in effect in its base rate an amount designed to recover, *during the succeeding twelve months*, the fuel costs determined by the Commission to be appropriate for that period, adjusted for the over-recovery or under-recovery from the preceding twelve month period.” *Id.* (emphasis added). This statutory scheme establishes successive twelve-month periods implementing a base fuel factor determined by the Commission in a hearing prior to the end of one twelve-month period for the utility to charge in the succeeding twelve-month period.

The Commission’s Order No. 2004-172, issued in Docket No. 2004-1-E, PEC’s most recent fuel adjustment proceeding, sets the base fuel factor for the period of April 1, 2004 through March 2005. By Order No. 2005-27 issued in Docket No. 2005-1-E, the Commission revised the standard schedule for PEC’s fuel cases to have a test period of April 1 through March 31 (rather than January 1- December 31) with new rates taking affect July 1. Thus, to be

consistent with the statute, the Commission must make a ruling in this proceeding before the end of June 2005, establishing the new fuel factor for the twelve-month period beginning with the first billing cycle in July 2005. While PEC opposes any extension of time, if one is granted, it should be sufficiently short to allow the Commission time to complete its work and make its decision prior to the end of June 2005. Such a time schedule is needed to comply with the requirements of section 58-27-865 and for the practical purpose of maintaining the uniformity and consistency needed by the utility and its customers and consistent with the Commission's long standing practice and custom.

ARGUMENT

While Nucor has failed to cite the applicable Commission Rule, the motion can only have been made pursuant to Rule 103-862, which provides as follows:

Any party of record desiring a continuance shall, immediately upon receipt of notice of the hearing or as soon thereafter as facts requiring such continuance come to its knowledge, notify the Executive Director, stating in detail the reasons why such continuance is necessary. Unless good cause is shown, no such continuance shall be granted.

Therefore, it is incumbent upon NUCOR to demonstrate that it notified the Commission as soon as it had reason to believe it would need a continuance and to demonstrate good cause for a continuance. Nucor has done neither.

Nucor has participated in PEC's fuel cases on numerous occasions and was involved in the legislative actions resulting in the most recent two amendments to the fuel clause statute. Nucor is very familiar with the fuel clause procedure. Nucor knew that the increase PEC would be seeking in this case would be very large two weeks before Nucor intervened because PEC's attorney advised Nucor's attorney of this during telephone conversations and e-mails occurring in late March and early April. Thus, Nucor fails the first requirement of the Commission's rule

that it notify the Commission immediately upon learning that believes it needs a continuance. Nucor, through its familiarity with the fuel cost recovery statute and the Commission's procedure, knew when the hearing would be held, and through conversations and e-mails with PEC's attorney knew the requested increase would be very large, long before April 29.

Turning to the requirement that Nucor demonstrate good cause, the only difference between this case and any other PEC fuel case, many of which Nucor participated in without the need for a continuance, is the size of the requested increase. But, that is a distinction without a difference. The issues in a fuel cost recovery case are the same regardless of the size of the increase. The size of the increase has no correlation to the difficulty of litigating the issues in the proceeding. The only significance of the size of the increase is, in general, the degree of interest shown in the case by the media or PEC's customers. Thus, Nucor has also not satisfied the second requirement of the Commission's rule.

The real reason for the requested postponement is NUCOR's own delays, tardiness, and desire to harass PEC through unnecessary and burdensome discovery, (discovery in addition to the comprehensive discovery performed by the ORS that has been made available to Nucor.) Nucor chose to wait until the next to last day to seek to intervene in the case, and then chose to do absolutely nothing in terms of formal discovery until 11 days later. It has also done nothing to arrange to come to Raleigh and review the documents made available to the ORS in response to ORS's discovery. In contrast, as mentioned earlier, the ORS did not wait to begin discover, sending PEC its first request on April 5.

When applying these undisputed facts to Commission Rule 103-862, it is clear that no sufficient and reasonable cause exists to continue the hearing date. The real cause underlying NUCOR's motion is its on tardiness and desire to harass PEC as evidenced by its unreasonably

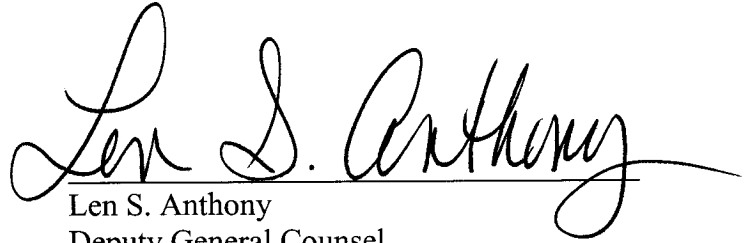
burdensome discovery request. However, “a party cannot complain of an error which his own conduct has induced.” State v. Babb, 299 S.C. 451, 454, 385 S.E.2d 827, 829 (1989) (affirming denial of a motion for continuance when the “shortage of time to prepare” was the fault of the party itself); see Beasley v. Kerr McGee Chemical Corp., 273 S.C. 523, 276 S.E.2d 756 (1979) (affirming denial of motion for continuance made immediately before trial on the ground of inadequate time to prepare).

The fuel hearing pending before the Commission is limited in scope and clearly set forth by statute. This matter involves an adjustment to recognize the costs of fuel required to provide electrical service. NUCOR has been provided with significant discovery materials via copies of responses made to discovery requests made by ORS. Responses to NUCOR’s discovery requests will be timely made. In summary, NUCOR has had more than adequate time to explore the narrow issues in this proceeding and prepare its testimony. See Daniel J. Hartwig Assocs., Inc. v. Kanner, 913 F.2d 1213, 1222-1223 (1990) (affirming denial of a continuance where “litigant fail[ed] to take advantage of opportunities to conduct discovery”).

Finally, the Commission should note that it denied a similar request for a delay in SCE&G’s recent fuel case, Docket No. 2005-2-E.

WHEREFORE, PEC asks the Commission to deny Nucor's motion to postpone the hearing in this proceeding.

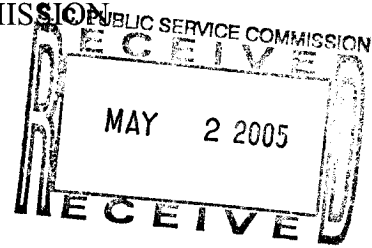
RESPECTFULLY SUBMITTED THIS 2ND DAY OF MAY, 2005.

A handwritten signature in black ink, reading "Len S. Anthony". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Len S. Anthony
Deputy General Counsel
P.O. Box 1551
Raleigh, NC
27602
Phone: (919)-546-6367

STATE OF SOUTH CAROLINA
BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 2005-1-E



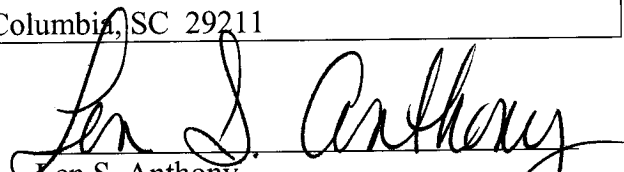
In the Matter of:

**Carolina Power & Light
Company, d/b/a Progress
Energy Carolinas, Inc., -
Annual Review of Base Rates
for Fuel Costs**

CERTIFICATE OF SERVICE

I, Len S. Anthony, hereby certify that Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc.'s Response in Opposition to Nucor Steel-South Carolina's Motion to Postpone Hearing in Docket No. 2005-1-E, has been served on all parties of record either by hand delivery or by depositing said copy in the United States mail, postage prepaid, addressed as follows this the 2nd day of May, 2005:

Florence P. Belser, Esq. State of South Carolina Office of Regulatory Staff P.O. Box 11263 Columbia, SC 29211	Mr. Scott Elliott SC Energy Users Committee 721 Olive Street Columbia, SC 29205
Garrett A. Stone, Esq. Brickfield, Burchette, Ritts & Stone, P.C. 1025 Thomas Jefferson Street, NW Eighth Floor, West Tower Washington, DC 20007	Thomas S. Mullikin, Esq. Moore & Van Allen, PLLC 100 North Tryon Street Suite 4700 Charlotte, NC 28202
Wendy B. Cartledge, Esq. State of South Carolina Office of Regulatory Staff P. O. Box 11263 Columbia, SC 29211	Mr. John Flitter State of South Carolina Office of Regulatory Staff P.O. Box 11263 Columbia, SC 29211


Len S. Anthony
Deputy General Counsel-Regulatory Affairs
410 S. Wilmington St. / PEB 17A4
Raleigh, NC 27602